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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 427

WILLIAM H. BICKLEY, INDIVIDUALLY AND DOING BUSINESS AS BICKLEY'S AUTO EXPRESS,

Petitioner,

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

H. EUGENE GARDNER,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, William H. Bickley, respectfully represents:

1. This is an action in Equity instituted by Bill of Complaint filed in the Common Pleas Court of Dauphin County, Pennsylvania, wherein your petitioner sought an order or injunction to restrain the above-named respondent, Pennsylvania Public Utility Commission, from interfering with operation of his business as a common carrier of goods, and from denying him his right to operate under the provisions of Article 3, Section 12 of The Public Service Company Law of Pennsylvania, commonly known as "The

Grandfather Clause", in the Act of July 26, 1914, P. L. 1374, of Pennsylvania, which reads in part as follows:

> "Every public service company shall be entitled to the full enjoyment and exercise of all and every, the rights, powers and privileges which it lawfully possesses or might possess at the time of the passage of this Act * * *"

2. In said Bill of Complaint, a copy of which appears on pages 3 to 15 of the printed record submitted herewith, your petitioner alleges that he is a citizen of the United States, that he resides at 424 Maple Avenue, Jenkintown, Pennsylvania, that for at least four years prior to July 26, 1913, he was engaged as a common carrier of property in Pennsylvania from the Delaware River on the east to the Susquehanna River on the west, and from the Mason and Dixon Line on the south to as far as ten miles north of United States Highway Route No. 22 on the north; that he had functioned as a common carrier of goods in said territory since at least four years prior to July 26, 1913, down to the present time; that in that time he built up said business, based upon dependable service, through his own efforts and through the efforts of others and through the investment of his money and earnings; that he built up his equipment and staff of employees and good will in the aforesaid period of time to take care of the requirements of shippers in the aforesaid territory; that after he had built up his equipment and personnel as aforesaid to service the aforesaid territory and after he had invested his money, earnings and efforts in said equipment, and after he had built up good will and a sizeable list of satisfied customers, the respondent herein notified your petitioner that it was curtailing his territory and limiting it to the small stretch or route between Philadelphia and Doylestown and intermediate points.

3. In his Bill of Complaint your petitioner further averred that he refused to accept said curtailment and took the position that such curtailment would deprive him of his rights under the Grandfather Clause in the Pennsylvania Public Service Company Law quoted in paragraph 1 of this petition; that such curtailment would limit the equipment he had built up to service the territory first referred to in paragraph 2 hereof to the much smaller territory later referred to in paragraph 2, thus rendering much of said equipment useless; and that such curtailment would destroy the good will your petitioner had built up over many years in the larger territory and would destroy his investment in the equipment he had, and would destroy his business—and the results of his efforts and labor—and would in effect give that business and good will and property to others without compensation to him for the taking.

4. In his Bill of Complaint your petitioner further averred that on May 13, 1936, and on June 11, 1936, before an Examiner of the respondent your petitioner and fourteen witnesses testified that he had conducted the aforesaid business as a common carrier for at least four years prior to July 26, 1913, and continuously since then, and there were no witnesses to the contrary, and yet, after operating for more than twenty years thereafter under said Grandfather Clause, the respondent ordered your petitioner to desist from said operation and to curtail his field of operation to the smaller territory.

5. Your petitioner has refused and still refuses to obey said order, contending that said order is illegal and unconstitutional in its operation; that said order denies him not only of his rights under the aforesaid Grandfather Clause in the Pennsylvania Public Service Company Law but takes from him his property and investment in that it requires him to use equipment built up for a larger terri-

tory in a smaller and more restricted territory and requires him to surrender his business and good will in the larger territory to others without compensation for such taking and without any good, sufficient and legal reason therefor. Ninety per cent of petitioner's business is the hauling of materials and equipment used in national defense.

6. That certain railroad and trucking interests have attempted to barge into the larger territory in which he operated long before they began to so operate, and your petitioner is informed, believes and therefore avers that said interests are in back of the aforesaid attempted denial of your petitioner's rights under the aforesaid law of Pennsylvania and under the Constitution of the United States.

7. That scores of satisfied shippers sought to join in the Bill of Complaint as evidenced by the Joinder on page 26 of the printed record submitted herewith, but the Common Pleas Court of Dauphin County, Pennsylvania, refused to permit them to so join. Most of these shippers aid national defense and depend upon the uncurtailed operation of your petitioner in so doing.

8. That your petitioner averred in his Bill of Complaint that the aforesaid order of the respondent not only deprived him of his rights under the Grandfather Clause aforesaid but was discriminatory in its operation and favored other carriers of goods not entitled to such favoritism, and if said order operated under the Pennsylvania Public Service Company Law, then that law, through the order, operated in such fashion as to deprive petitioner of his property without due process of law and in such fashion as to deny him the equal protection of the law.

9. That your petitioner, after alleging the foregoing facts in his Bill of Complaint, demanded Trial by Jury under Section 1111 of the Act of May 28, 1937, P. L. 1053, Article

XI, of the Commonwealth of Pennsylvania, as appears from Motion for Trial by Jury on page 40 of the printed record herewith, but the respondent filed Preliminary Objections to the Bill of Complaint (page 29 of the record filed herewith) alleging that the matter was res adjudicata and that the Commission (respondent herein) had decided in the proceeding in which your petitioner produced fourteen witnesses besides himself without contradiction that he had operated in larger territory as aforesaid that he nevertheless was not entitled to operate under the Grandfather Clause, even though he had so operated for more than twenty years, and even though the Commission (respondent herein) had permitted him to so operate and to build up his business and equipment without interference until the aforesaid railroads and trucking concerns decided to barge into your petitioner's field of operation.

10. That the Common Pleas Court of Dauphin County, Pennsylvania, denied your petitioner a hearing on his Bill of Complaint, and denied him his day in court, and denied him an opportunity to prove the facts above set forth, and denied him a Trial by Jury, and in its opinion dismissing the Bill of Complaint sustained the preliminary objection that the matter was res adjudicata.

11. The matter before the Common Pleas Court of Dauphin County, Pennsylvania, raised questions of fact and questions of law and constitutional questions as stated above which were not raised in the 1936 proceedings to curtail your petitioner's territory before the Pennsylvania Public Utility Commission (the respondent herein), and therefore said questions were not before the Superior Court of Pennsylvania when said proceedings were taken to said court in 1937 and in 1939 (See *Bickley* v. *Penna. Public Utility Commission*, 129 Pa. Superior Ct. 115 (1937) and *Bickley* v. *Penna. Public Utility Commission*, 135 Pa. Superior Ct.

490 (1939)). And if the record before the Pennsylvania Public Utility Commission and before the Superior Court of Pennsylvania was not brought into the Common Pleas Court of Dauphin County, your petitioner avers that said court had nothing before it on which to base its finding of res adjudicata. And certainly said record could not be offered in evidence unless the Common Pleas Court of Dauphin County allowed a hearing in which your petitioner would be given an opportunity to prove the facts alleged by him.

12. Your petitioner appealed to the Superior Court of Pennsylvania from the Decree of the Common Pleas Court of Dauphin County, Equity No. 1550, Commonwealth No. 1427, dismissing the Bill of Complaint.

13. In the Superior Court of Pennsylvania as of March Term 1942, No. 4, Harrisburg District, your petitioner contended that the Common Pleas Court of Dauphin County, Pennsylvania, erred in dismissing the Bill of Complaint, in sustaining the preliminary objection that the matter was res adjudicata without a hearing and without the record alleged to be res adjudicata before it and without an opportunity on the part of your petitioner to prove by testimony and evidence the contrary to be true, and in not giving your petitioner a hearing or day in court or opportunity to show that the order of the respondent herein was discriminatory and confiscatory and that it violated your petitioner's rights under the Grandfather Clause of the Pennsylvania Public Service Company Law and his right to not have his territory, business and good will and equipment and investment therein taken without compensation, without trial by jury and without due process of law. These contentions of your petitioner in the Superior Court of Pennsylvania appear in the Statement of Questions Involved appearing on pages 1 and 2 of the printed

brief of your petitioner used in the Superior Court of Pennsylvania and filed herewith (R. 54-55) and in the Assignments of Error appearing on pages 6, 7 and 8 of said printed brief (R. 67-69).

14. The Superior Court of Pennsylvania decided against your petitioner, and held that the order of respondent was not discriminatory and not confiscatory and not in violation of his rights under Pennsylvania Law and under the Federal Constitution as referred to above. So decided April 15, 1942.

15. Your petitioner avers that said decision of the Superior Court of Pennsylvania was not in line with its decision in the *Hostetter* case in 110 Penna. Superior Court 212 in which rights under the Grandfather Clause of the Pennsylvania Public Utility Law were also involved.

16. Your petitioner then petitioned the Supreme Court of Pennsylvania for the allowance of an appeal thereto from the Superior Court of Pennsylvania, which appeal was refused on June 29, 1942.

17. By reason of the foregoing your petitioner avers that he is not only denied his rights as a common carrier under the Grandfather Clause of the Public Service Company Law of the Commonwealth of Pennsylvania of July 26, 1914, P. L. 1374, and his right to hearing or trial, either with or without jury, under the Section 1111 of the Act of May 28, 1937, P. L. 1053, Article XI, of the Commonwealth of Pennsylvania, but also is denied the equal protection of the laws of the Commonwealth of Pennsylvania, and has his property taken from him, and his territory, business and good will and investment, by a confiscatory and discriminatory order, without compensation for such taking and without due process and without trial by jury, contrary to

the provisions of Amendment XIV, Section 1, to the Constitution of the United States of America, which reads, in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of * * * property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

and avers that in this case there is by reason of an order of the respondent, allegedly made under a law of the Commonwealth of Pennsylvania, as much confiscation, discrimination and taking of property without compensation and without due process as existed in the case of *Hill Military Academy and Catholic Sisters* v. *Pierce, Governor of Oregon,* 268 U. S. 510 (1924), in which your Honorable Court held a law of the State of Oregon operating in such fashion unconstitutional.

WHEREFORE, your petitioner, believing that an injustice has been done, and that he has been discriminated against and that his property and investment and business and good will are being taken without compensation and without due process, and that the errors referred to above affect his constitutional and substantive rights, and that the conclusions reached were both unjust and wrong, and that the case should be returned to the Pennsylvania Courts for hearing or for trial by jury and with the process to which he is entitled, prays your Honorable Court that a writ of certiorari issue under the seal of your Honorable Court, directed to the Superior Court of Pennsylvania commanding said Court to certify and send to your Honorable Court a full and complete transcript of the record and of the proceedings of the said Common Pleas Court of Dauphin County, Pennsylvania, had in the case numbered and en-

titled William H. Bickley, individually and doing business as Bickley's Auto Express, Complainant, *vs.* Pennsylvania Public Utility Commission, Respondent, Equity No. 1550, Commonwealth No. 1427, and No. 4, Superior Court, Harrisburg District, March Term 1942, to the end that this case may be reviewed and determined by your Honorable Court as provided for by the Constitution and Statutes of the United States, and that the decree of said Common Pleas Court of Dauphin County, Pennsylvania, and the Superior Court of Pennsylvania, may be reversed by your Honorable Court and/or said case returned for hearing or for trial by jury, and for such further relief as to your Honorable Court may seem proper.

WILLIAM H. BICKLEY.

Dated: September 25, 1942.

STATE OF PENNSYLVANIA,
County of Montgomery, ss:

William H. Bickley, being duly sworn according to law, deposes and says that he is the above-named petitioner, complainant and appellant, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

WILLIAM H. BICKLEY.

Sworn to and subscribed before me this 25th day of September, A. D. 1942.

E. NELSON WEIR,
Notary Public.

[SEAL.]

My commission expires May 21, 1943.